

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: LEWANDOWSKI, DALE and  
LEWANDOWSKI, JUDITH,

Chapter 7  
Bky Case No. 00-32696

Debtors.

**NOTICE OF HEARING AND OBJECTION**  
**TO PROOF OF CLAIM NO. 12**

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TO: Debtors, Debtors' Attorney, Joseph Wentzell, U.S. Trustee, Claimant, Sam and Diane Montgomery, Claimants' Attorney, Bradley W. Solheim, as set forth on the attached service list and interested parties:

I.

Patti J. Sullivan, the duly appointed and qualified Trustee of the captioned bankruptcy estate, objects to the above proof of claim and gives notice of hearing herewith.

II.

The Court will hold a hearing on this objection on November 3, 2004, at 10:00 A.M., or as soon thereafter as counsel may be heard, in Courtroom No. 228A, at the United States Court House, 316 N Robert St., St. Paul, Minnesota 55101,

III.

Any response to this motion must be filed and delivered not later than October 27, 2004, which is seven days before the time set for the hearing, or filed and served by mail not later than October 25, 2004, which is ten days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

IV.

This Court has jurisdiction in this matter pursuant to 28 U.S.C. Section 157 and 1334 and amendments thereto. This objection arises under 11 U.S.C. Section 502. Local Rule 3007-1 is applicable. This is a core proceeding under 28 U.S.C. §157(b)(2)(B).

V.

Trustee objects to claim number 12 by Sam Montgomery and Diane Montgomery wherein the claimants have not specified an exact amount of their claim. A copy of the claim is attached hereto and incorporated by reference herein.

VI.

Trustee objects to the claim on the basis that Trustee is unable to calculate the amount of the claim, which states: “claim is for damages equal to difference between encumbrances against subject property and Option Contract price”. It is an undeterminable amount. Despite letters and phone calls to the creditors’ attorney, there has been no response to the Trustee’s request for a specific dollar amount of their claim.

VII.

In the event that an answer raises issues, which cannot be easily resolved at the hearing, Trustee may request the Court that the hearing be used as a scheduling conference and that further hearings be set by the Court.

WHEREFORE, trustee prays for an Order of this Court disallowing claim number 12 in its entirety and granting such other and further relief as the Court deems just and equitable.

Dated this 27<sup>th</sup> day of September 2004

By: /s/ Patti J. Sullivan  
Patti J. Sullivan  
Attorney ID No. 170124  
P.O. Box 16406  
St. Paul, MN 55116  
(651) 699-4825

## **VERIFICATION**

I, Patti J. Sullivan, Trustee of the captioned bankruptcy estate, certify under penalty of perjury that the foregoing Objection to Proof of Claim and the information contained therein is true and correct according to the best of my knowledge, information and belief.

Dated this 27<sup>th</sup> day of September 2004.

/s/ Patti J. Sullivan  
Patti J. Sullivan, Trustee

UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA		PROOF OF CLAIM
Name of Debtor: Dale Lewandowski Judith Lewandowski	Case Number: 00-32696	<div style="text-align: right; font-size: 1.2em; margin-bottom: 20px;">12/01</div> <div style="text-align: center; border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; margin: 0 auto; display: flex; align-items: center; justify-content: center;">12</div> <div style="text-align: center; margin-top: 20px;">THIS SPACE IS FOR COURT USE ONLY</div>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor: (The person or entity to whom the debtor owes money or property) Sam and Diane Montgomery	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent: Sam and Diane Montgomery c/o Scott Lucas 121 West Main Street, Suite 200 Waconia, MN 55387 Telephone number: 952-442-7706		
Account or other number by which creditor identifies debtor:	Check here <input type="checkbox"/> replaces a previously filed court claim, dated: 10/31/00 if this claim: <input checked="" type="checkbox"/> amends <u>5</u>	
<b>1. Basis for Claim:</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>Real Estate Option Contract (See Exhibit A attached)</u>		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensations (Fill out below) Your SS# _____ Unpaid compensations for services performed from _____ to _____ (date) (date)		
2. Date debt was incurred: September 22, 1997	3. If court judgment, date obtained:	
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ _____ If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges. Claim is for damages equal to difference between encumbrances against subject property and Option Contract price (see Exhibit A)		
<b>5. Secured Claim</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Claimant asserts interest in debtor's real property pursuant to attached Option Contract and this Court's Order herein** Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____ ** dated 4/12/01.	<b>6. Unsecured Priority Claim</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim. Amount entitled to priority claim \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,300*), earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier — 11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan — 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$1,950* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use — 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child — 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or other penalties of governmental units — 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other — Specify applicable paragraph of 11 U.S.C. § 507(a) _____ *Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
<b>7. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. <b>8. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. <b>9. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date 9/6/01	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): 	
<b>SEND ORIGINAL TO:</b> U.S. BANKRUPTCY COURT 200 U.S. COURTHOUSE 316 NORTH ROBERT STREET ST. PAUL, MN 55101  <b>FOR PAYMENT SEND COPY TO:</b> JASMINE Z. KELLER, TRUSTEE SUITE 310; PLYMOUTH BLDG. 12 SOUTH 6TH STREET MINNEAPOLIS, MN 55402		
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 35		

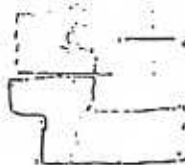
This Agreement, made this 1st day of May, 1997,  
by and between Dale & Luc Lewandowski  
party of the first part, Lessor, and Sam & Diane Montgomery  
of the Township of Hollywood, County of Carver,  
and State of Minnesota, party of the second part, Lessee.

WITNESSETH, That the said party of the first part, in consideration of the rents and covenants hereinafter mentioned, does hereby Remise, Lease and Lot unto the said party of the second part, and the said party of the second part does hereby hire and take from the said party of the first part, the following described premises situated in the County of Henson, and State of Minnesota, viz:

S 1/2 of SE 1/4 & SE 1/4 of SW 1/4 & N 1/2 of SW 1/4 and

S 1/2 of NW 1/4, except North 50 acres, all in Section 34.

T 38 N - R 29 W



in Section Number 34, Township Number 38 N, Range Number 29 W, containing 22.8 acres be the same more or less, of which described premises the second party hereby agrees to plow and put in crops not less than 22.8 if possible acres each year during the continuance of this Lease.

To Have and to Hold, The above rented premises unto the said second party, heirs and assigns, subject to the conditions and limitations hereinafter mentioned for and during the full term of 9.99 years from and after the 1st day of May, 1997, the term of this Lease ending the 1st day of April, 1998.

And the said second party agrees to and with the said first party to pay as rent for the above mentioned premises, for and during the full term of this Lease, the sum of as outlined below

\_\_\_\_\_ Dollars, payable at \_\_\_\_\_ installments with interest at the rate of \_\_\_\_\_ per cent on each installment after due, to-wit:

\$ 5130 on or before MAY 1, 1997

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ 4117.5 on or before April 20, 1997

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

\$ \_\_\_\_\_ on or before \_\_\_\_\_

Balance of \$45. per planted acre upon signing of this typed rental lease with option. Total 205.5 acres, 45 = 9247.5 - 500 = 4117.5

And it is Further Agreed, by and between the parties as follows: That should the said second party fail to make the above mentioned payments as herein specified, or to pay any of the rent aforesaid when due, or fail to fulfill any of the covenants herein contained, then and in that case said first party may re-enter and take possession of the above rented premises, and hold and enjoy the same without such re-entry working a forfeiture of the rents to be paid by the said second party for the full term of this lease. That if the said first party sells said premises during the life of this lease and before the crop is in the ground, and desires to

give possession to the purchaser, that the second party will forthwith surrender possession of said leased premises upon the payment to him of \$ \_\_\_\_\_ per acre for each acre of said premises newly plowed by said second party at the time said possession is demanded if said after the crop is in, then said second party shall have the right to remove such crop when ready to be harvested. That if said first party sells said premises during the term of this lease, the purchaser may at any time enter upon the leased premises for the purpose of plowing, breaking more land, summer-fallowing, cultivating or otherwise improving any part of said premises not in actual cultivation by said second party, and without such entry working any forfeiture of the rents herein agreed to be paid. That if said second party remains in possession of said premises after the expiration of the term for which they are hereby leased, such possession shall not be construed to be a renewal of this lease, but to be a tenancy at the will of the said first party, which may be terminated upon ten days' notice, given by the said first party in writing, either delivered

to second party or sent to him in a sealed envelope, duly addressed and directed to him at which is hereby declared by said second party to be his usual post-office address.

And the said second party also covenants and agrees to and with the said first party, not to assign this lease or underlet the above rented premises or any part thereof, without first obtaining the written consent of the said first party and that he will, at the expiration of the time he herein rented, quietly yield and surrender the aforesaid premises to the said first party, his heirs or assigns, in as good condition and repair as when taken, reasonable wear and tear and damage by the elements alone excepted. Said second party also covenants and agrees to deliver and hereby deposit premises in a careful and husband-like manner, and to maintain and keep up the fences so as to protect all crops from injury and waste, and to protect the fruit and shade trees thereon, and to cut no green trees and to commit no waste or damage on said real estate and to suffer none to be done; and to keep up and maintain in good repair all buildings, stables, cellars, fences and improvements on said land; and further agrees not to remove any straw or manure from said land, but to spread upon said premises all manure made thereon.

The party of the second part is also to destroy all noxious weeds and other noxious weeds growing on said land, declared by statute to be noxious nuisances, within the times prescribed by law, and shall keep all roads and other parts of the land, not in crop, mowed and free from growing weeds. And the first party or his agent shall have the right to enter upon said premises at any time, without injury to the standing crops, for the purpose of making any improvements, or to prepare for the succeeding crop, or for any other purpose whatsoever.

And the said first party covenants that the said second party, on paying the rent and performing the covenants aforesaid, shall peaceably and quietly have, hold and enjoy the said rented premises and the said second party agrees to reside and occupy the buildings thereon for the term aforesaid. In the event of any rents due herein being collected by suit, the second party further agrees to pay all expenses which may be incurred thereby.

As security for the payment of the rents herein specified and the faithful performance and strict fulfillment of all the covenants of said second part in this lease contained, said second party does hereby grant a security interest in said first party in all crops grown or growing on said premises during the term of this lease and in products and contract rights with respect thereto and all proceeds of such crops. Upon any default on the part of said second party in paying said rent or in performing any of the covenants of this lease, and at any time thereafter, said first party shall have, in addition to the rights and remedies granted herein, all rights and remedies of a secured party under the Uniform Commercial Code and other applicable law, and said first party may require said second party to maintain said property and make it available to said first party at a place to be designated by said first party that is reasonably convenient to both parties. Expenses of retaking, holding, preparing for sale, selling and the like, shall include the reasonable attorneys' fees and legal expenses of said first party.

This Lease also includes Lessee's right to rent land on the same terms

Words used in this instrument in the masculine gender include the feminine and neuter, the singular number includes the plural and the plural the singular.

IN TESTIMONY WHEREOF, Both parties have hereunto set their hands the day and year herebefore written.

IN PRESENCE OF



SHERYL M. PETERSON  
NOTARY PUBLIC - MINNESOTA  
My Commission Expires Jan. 31, 2000

*Wes Lee*  
*Judy Lewandowski*  
*Sam Montgomery*

STATE OF

County of

*Minnesota*  
*Wright*

On this

*2nd*

day of

*Sept*

10

*27*

before me,

within and for said

County and State, personally appeared

*Sheryl M. Peterson*

*Judy Lewandowski*

*Sam Montgomery*

to me known to be the person

described in and who executed the foregoing instrument, and acknowledged that they executed the same as

free act and deed.



SHERYL M. PETERSON  
NOTARY PUBLIC - MINNESOTA  
My Commission Expires Jan. 31, 2000

STATE OF

County of

On this

day of

10

before me,

within and for said County, personally appeared

and

to me personally known, who, being each by me duly sworn

the President and the

of the corporation named in

the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument

was signed and sealed in behalf of said corporation by authority of its Board of

and sold

acknowledged said instrument to be the free act and deed of said corporation.

246580

OFFICE OF  
DEKTON COUNTY RECORDER  
DEKTON COUNTY, MN  
CERTIFIED TO BE FILED  
AND/OR RECORDED ON

JAN 7 11 11 AM '98

ALICE C. ENGELHART  
COUNTY RECORDER

*By [Signature]*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In the Matter of:

LEWANDOWSKI, DALE and  
LEWANDOWSKI, JUDITH,

Debtors.

Bky No. 00-32696  
Chapter 7

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**UNSWORN CERTIFICATE OF SERVICE**

I, Joeline Kissinger, declare under penalty of perjury that on the 27<sup>th</sup> day of September, 2004, I mailed a copy of the attached **Notice of Hearing and Objection to Proof of Claim No. 12 and Proposed Order** by first class mail postage prepaid to each entity named below or on the statement attached at the address stated below or in said attachment for each entity:

Joseph A. Wentzell  
Foster Wentzell & Hedback  
2855 Anthony Ln S, Suite 201  
St. Anthony, MN 55418

United States Trustee  
1015 United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Dale Lewandowski  
26214 7th Street  
Zimmerman, MN 55398-9307

Judith Lewandowski  
26214 7th Street  
Zimmerman, MN 55398-9307

Sam Montgomery  
Diane Montgomery  
c/o Bradley W. Solheim, Esq.  
121 West Main Street, Suite 200  
Waconia, MN 55387

Roylene A. Champeaux  
Assistant U.S. Attorney  
600 United States Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Sam V. Calvert, Esq.  
1011 2<sup>nd</sup> St N #107  
Box 1044  
St. Cloud, MN 56302-1044

Executed on this 27<sup>th</sup> day of September 2004.

  
Joeline Kissinger



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: LEWANDOWSKI, DALE and  
LEWANDOWSKI, JUDITH,

Chapter 7  
Bky Case No. 00-32696

Debtors.

**ORDER DISALLOWING**  
**CLAIM NO. 12**

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The above-entitled matter came on for hearing before the undersigned Bankruptcy Judge, upon the Trustee's Objection to allowance of Claim No. 12 filed by Sam Montgomery and Diane Montgomery.

Appearances were noted on the record.

Upon said objection, and all the files, records and proceedings herein,  
IT IS HEREBY ORDERED:

That Claim No. 12 filed by Sam Montgomery and Diane Montgomery, in the undeterminable amount, is disallowed.

Dated: \_\_\_\_\_

By the Court

\_\_\_\_\_  
DENNIS D. O'BRIEN  
UNITED STATES BANKRUPTCY JUDGE